

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #7	CCRB Case #: 202003712	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 9:51 PM	Location of Incident: Broadway between East 11th Street and East 13th Street	Precinct: 06	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 9:40 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/01/2020 9:40 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Harris	22788	965173	046 PCT
2. POM Joshua Jiminez	06074	963583	046 PCT
3. POM Evan Angels	14528	965929	046 PCT
4. DC James Mccarthy	00000	885671	PBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Jorge Rodriguez	00000	918237	046 PCT
2. SGT Janielle Mendoza	04672	945429	046 PCT
3. POM Peter Esposito	16602	960509	046 PCT
4. POF Katherine Torres	04014	959309	046 PCT
5. POF Jazmine Cruz	22435	962998	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
6. POM Shahriar Hussain	26768	967117	046 PCT
7. POM Joel Milian	06760	966223	046 PCT
8. CPT Yerlin Moya	00000	937147	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DC James Mccarthy	Force: Deputy Chief James Mccarthy used pepper spray against individuals.	
B.POM Vincent Harris	Force: Police Officer Vincent Harris used pepper spray against individuals.	
C.POM Vincent Harris	Force: Police Officer Vincent Harris used physical force against an individual.	
D.POM Vincent Harris	Force: Police Officer Vincent Harris used pepper spray against an individual.	
E.POM Vincent Harris	Abuse: Police Officer Vincent Harris threatened § 87(2)(b) with the use of force.	
F.POM Vincent Harris	Force: Police Officer Vincent Harris struck individuals with a baton.	
G.POM Joshua Jiminez	Force: Officers struck individuals with batons.	
H.POM Vincent Harris	Force: Police Officer Vincent Harris used pepper spray against individuals.	
I.POM Vincent Harris	Force: Police Officer Vincent Harris pointed his gun at individuals.	
J.POM Joshua Jiminez	Force: Police Officer Joshua Jiminez used force against individuals.	
K.POM Evan Angels	Force: Police Officer Evan Angels used pepper spray against individuals.	
L.POM Evan Angels	Discourtesy: Police Officer Evan Angels spoke discourteously to § 87(2)(b)	

Case Summary

On June 1, 2020, § 87(2)(b) filed the following complaint using the CCRB website. § 87(2)(b) was a non-witnessing complainant who saw video of this incident on the Internet.

At approximately 9:50 p.m. on May 31, 2020, Deputy Chief James McCarthy of Patrol Boro Manhattan South, Captain Yerlin Moya of the 41st Precinct, and Lieutenant Jorge § 87(2)(b) Sergeant Janielle Mendoza, Police Officer Vincent Harris, Police Officer Joshua Jiminez, Police Officer Evan Angels, Police Officer Katherine Torres, Police Officer Jazmine Cruz, Police Officer Peter Esposito, Police Officer Joel Milian, and Police Officer Shahriar Hussain of the 46th Precinct followed a large protest to the southeast corner of East 12th Street and Broadway in Manhattan. There, Deputy Chief McCarthy and Captain Moya apprehended § 87(2)(b) for reportedly threatening property and people with a brick.

As Deputy Chief McCarthy and Police Officer Angels worked to handcuff § 87(2)(b) protesters surrounded all the officers and began throwing things at them. Deputy Chief McCarthy and Police Officer Harris discharged their pepper spray at crowd members (**Allegation A: Force: Pepper spray:** § 87(2)(g), **Allegation B: Force: Pepper spray:** § 87(2)(g)). An unknown civilian threw a traffic cone at Police Officer Harris, hitting him in the arm as he used his pepper spray. Police Officer Harris charged and shoved a different civilian, knocking them to the ground (**Allegation C: Force: Physical Force:** § 87(2)(g)), then immediately pepper sprayed another civilian at close range (**Allegation D: Force: Pepper spray:** § 87(2)(g)). Police Officer Harris then aimed his pepper spray at and charged towards § 87(2)(b) a civilian who recorded this portion of the incident (**Allegation E: Abuse of Authority: Threat of force:** § 87(2)(g)).

Police Officer Harris and Police Officer Jiminez approached a section of the crowd while swinging and pushing at civilians with their batons (**Allegation F: Force: Nightstick as club:** § 87(2)(g), **Allegation G: Force: Nightstick as club:** § 87(2)(g)). Police Officer Harris then discharged his pepper spray again at the crowd (**Allegation H: Force: Pepper spray:** § 87(2)(g)). A civilian threw a brick at Police Officer Harris, which struck his helmet. Police Officer Harris drew his gun and pointed it towards the brick thrower while walking towards him (**Allegation I: Force: Gun pointed:** § 87(2)(g)). As the brick thrower fled, Police Officer Harris holstered his gun and returned to his fellow officers' position.

A civilian threw a garbage bag towards the officers, and Police Officer Jiminez threw it back over people's heads into the crowd (**Allegation J: Force:** § 87(2)(b) § 87(2)(g)). Having handcuffed § 87(2)(b) the officers began to retreat east along the southern sidewalk of East 12th Street. The crowd pursued them, and a civilian reportedly threw a traffic cone, hitting Police Officer Angels in the leg. Police Officer Angels pepper sprayed this civilian (**Allegation K: Force: Pepper spray:** § 87(2)(g)) before continuing to retreat. § 87(2)(b) dropped his weight towards the ground, slowing the officers' progress away from the crowd. Police Officer Angels shouted at him, saying "Get the fuck up! Get the fuck up and walk like a man!" (**Allegation L: Discourtesy: Word:** § 87(2)(g)).

The investigation obtained three civilian-recorded videos of this incident. The news website Gothamist uploaded an anonymously sourced video to their YouTube and Twitter accounts and within their written articles (**Board Review 01**, referred to throughout this report as “**Gothamist**”). § 87(2)(b) gave the CCRB a cellphone video they recorded during the incident (**Board Review 02**, referred to throughout this report as § 87(2)(b)). An unidentified Twitter user uploaded a third video (**Board Review 03**, referred to throughout this report as “**Twitter**”).

The investigation obtained BWC video of this incident from Police Officer Jiminez (**Board Review 04**, referred to throughout this report as “**BWC**”). The investigation also obtained BWC videos recorded shortly after this incident from other involved officers, but these videos do not contain information relevant to the analysis of FADO allegations and have not been marked for Board review.

While the investigation did not obtain video capturing the very beginning of this incident, the available video metadata and combined civilian and officer testimony strongly indicate that the available video captures most of the incident (which lasted approximately three minutes). Using the file creation timestamp from § 87(2)(b) the internal, watermarked timestamp from **BWC**, and multiple synchronization points (moments within the videos where multiple videos capture the same distinctive audio and visual events), the investigation was able to establish a detailed timeline of relevant events and FADO allegations. While timestamps are provided within this report whenever video is discussed for a specific allegation, a full timeline is also available as **Board Review 05** and may be a useful reference.

Findings and Recommendations

Allegation A – Force: Pepper spray: Deputy Chief James McCarthy used pepper spray against individuals.

§ 87(2)(b) provided a statement over the phone on June 15, 2020 (**Board Review 06**). Police Officer Harris was interviewed at the CCRB on August 11, 2020 (**Board Review 07**). Police Officer Jiminez and Police Officer Angels were interviewed at the CCRB on September 15, 2020 (**Board Review 08**, **Board Review 09**). Deputy Chief McCarthy was interviewed on October 14, 2020 (**Board Review 10**).

All four interviewed officers provided consistent accounts of how they came to be at the incident location. On the incident date, the NYPD assembled Mobile Field Forces (MFFs) to stand by in case large protests happened. All the involved officers from the 46th Precinct were assigned to an MFF together, and on the incident evening they received orders to travel to downtown Manhattan. Upon arriving in the incident vicinity, they encountered other MFFs from other Bronx Precincts staging in the same area. Deputy Chief McCarthy led the 46th Precinct officers and Captain Moya north along Broadway as a large crowd walked up the street. Officers variously estimated the crowd as consisting of between 200 and 1000 people, and unanimously described it as hostile. Civilians chanted political slogans, shouted and cursed at officers, and threw objects in various directions (though not yet at the officers themselves).

Deputy Chief McCarthy stated that as he approached the incident intersection, he clearly saw § 87(2)(b) throw a brick through a business’ front window. The other interviewed officers consistently described seeing Captain Moya and Deputy Chief

McCarthy bring § 87(2)(b) to the ground and begin arresting him. The other interviewed officers all stated that they did not observe § 87(2)(b) prior to Deputy Chief McCarthy and Captain Moya apprehending him.

It is undisputed that as officers began to apprehend § 87(2)(b) the crowd collectively focused on and approached this conflict. The earliest available incident video is **Gothamist**, and as the video begins, the recording civilian and other people are moving towards § 87(2)(b) who is face down on the sidewalk with Captain Moya and Police Officer Angels handcuffing him. In his interview, Deputy Chief McCarthy explained that at the start of this video (0:01) he is visible deploying pepper spray with one hand while calling “10-13” over the radio in his other hand (requesting backup immediately). At 0:04, a civilian in a white shirt appears to be affected by pepper spray; between 0:04 and 0:18 they quickly move away from Deputy Chief McCarthy, sit down on the sidewalk, remove their backpack, take out a plastic water bottle, and pour water into their eyes.

Deputy Chief McCarthy stated that once the crowd approached the officers, they began to throw bottles. Deputy Chief McCarthy could not describe the bottles or their contents. The video shows that § 87(2)(b)'s arrest took place under a multi-story construction scaffolding, some of which is reinforced with x-shaped cross struts. Officers consistently testified that this scaffolding offered incomplete cover from thrown objects, and they could hear items hitting the scaffolding above them at different points in the incident. **Gothamist** first shows a civilian throwing something towards the officers at 0:14, when someone throws a large, blue, plastic sign and it is blocked by the scaffolding cross struts. Prior to this, the video does not show civilians throwing anything, including bottles, at the officers, moving rapidly towards the officers, or otherwise attacking the officers. Later sections of multiple videos show thrown objects approaching or hitting officers, indicating that the scaffolding offered, at best, partial cover from projectiles.

During this incident, Deputy Chief McCarthy carried a normal, belt mounted pepper spray canister of the type carried by non-specialized patrol officers. Deputy Chief McCarthy deployed his pepper spray to keep people away from him. Deputy Chief McCarthy recalled using his pepper spray multiple times, but was unsure of the relative timing of the sprays (back to back, on multiple separate occasions, etc.) and the manner in which he directed the spray (in a circle, side-to-side, up and down, etc.). In response to the pepper spray, the crowd backed up a couple of feet. Deputy Chief McCarthy believed that one or two people were affected by the spray because they were wiping their eyes, but he did not know what happened to them. Deputy Chief McCarthy was unable to recall or describe any specific civilian within the crowd as dangerous or memorable. He did not recall if he ever targeted a specific civilian with the pepper spray but recalled using it to move the crowd in general backwards.

During his tenure in the Police Department, Deputy Chief McCarthy had been assigned to numerous protests and demonstrations (including, but not limited to, the 2004 RNC protests and Occupy Wall Street). As of the incident date, Deputy Chief McCarthy had been a member of service of 36 years and 20 of those years were in the rank of Captain and above. Deputy Chief McCarthy has undergone Disorder Control training and SRG trainings from the Police Academy. Deputy Chief McCarthy did not recall when he received the most recent trainings regarding protests but said that it was within the last five years.

Under NYPD Patrol Guide procedure 221-01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise

protect life. In determining whether the use of force is reasonable, members of the service should consider the following: the nature and severity of the crime and circumstances, actions taken by the subject, the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, the number of subjects in comparison to the number of MOS, and the presence of hostile crowd or agitators. Members of service shall not use any level of force to punish or retaliate **(Board Review 11)**.

Under NYPD Patrol Guide procedure 221-07, officers may use pepper spray to gain or maintain control of persons who are exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. Active aggression means a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must avoid discharging pepper spray indiscriminately over a large area for disorder control. Members who are specifically trained in the use of pepper spray for disorder control may use pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors. **(Board Review 12)**.

The NYPD's SRG training materials (modules 4 and 5) describe the proper use of pepper spray for crowd control. Supervisors may authorize the use of Sabre MK-9 pepper spray to disperse a crowd if an immediate life safety emergency exists that requires this action to be taken. The MK-9 pepper spray is used to create a zone of safety around the officers and is never used at a range of less than 6 feet, as such use can cause tissue damage. The Sabre MK-9 pepper spray canister is 10.5" tall and contains 16 oz of chemical irritant **(Board Review 17)**.

§ 87(2)(g)

During this incident, Deputy Chief McCarthy targeted the entire crowd with his pepper spray and had no recollection of a specific civilian(s) being dangerous. Deputy Chief McCarthy has undergone SRG training and has significant experience supervising large, political protests. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Force: Pepper spray: Police Officer Vincent Harris used pepper spray against individuals.

Allegation C – Force: Physical force: Police Officer Vincent Harris used physical force against § 87(2)(b)

Allegation D – Force: Pepper spray: Police Officer Vincent Harris used pepper spray against § 87(2)(b)

Allegation E – Abuse of authority: Threat of force: Police Officer Vincent Harris threatened to use force against § 87(2)(b)

At 0:22 of **Gothamist**, Police Officer Harris is briefly visible deploying pepper spray towards the crowd. This same moment is more clearly captured from 0:00 to 0:09 of § 87(2)(b). In that video, Police Officer Harris is visible deploying his pepper spray in the general direction of officers and the crowd. He begins deploying the spray when he is approximately two steps behind the scaffolding, several feet away from the crowd. Several officers standing closer to the crowd do not deploy their spray. As he sprays, Police Officer Harris steps toward the scaffolding, moving his right arm in broad, sweeping motions as he continues to discharge the pepper spray.

At 0:07 of § 87(2)(b) an orange traffic cone flies from off-screen, hits Police Officer Harris from behind in the right hand, and then lands on the ground. Upon being hit with the cone, Police Officer Harris immediately turns to his right, pauses very briefly, and charges approximately three steps towards a civilian. Police Officer Harris, still moving forward, uses both hands to shove the stationary civilian in the upper body, immediately knocking them off their feet and on to their back. As Police Officer Harris shoves forward, the civilian has both their arms held closely to their stomach or chest. The civilian does not move towards or attack Police Officer Harris in any visible way.

As the first civilian falls, Police Officer Harris turns to his right (now facing towards the camera) and pepper sprays a red-haired civilian as they move left to right across the video frame. This civilian is only visible on video briefly but does not appear to attack Police Officer Harris either.

As Police Officer Harris continues to move towards the camera with his pepper spray still in-hand, the video appears to swing around rapidly before becoming unintelligible. In his sworn statement, § 87(2)(b) said that Police Officer Harris

appeared to be about to pepper spray him, so he quickly turned and ran east along East 12th Street.

In his interview, Police Officer Harris did not mention this portion of the incident in either his initial narrative or upon detailed questioning. When first asked, Police Officer Harris stated that he never pushed or shoved any civilians back away from him during the incident. However, upon being shown § 87(2)(b) Police Officer Harris identified himself as the involved officer. He stated that at this point in the incident, people were too close to the officers, throwing things at them, and outnumbered the officers. Police Officer Harris felt that it was not safe to go into the crowd, but still needed to back the crowd up. He decided that pepper spray would be the safest way to get the crowd to back up. At 0:11, Police Officer Harris acknowledged that the video shows him knocking someone to the ground. He had no independent recollection of doing this, but, based on the video, said that he did this for crowd control. He provided no other justification for this use of force, did not recall that person doing anything specific, and could not elaborate on this interaction. At 0:11, Police Officer Harris confirmed that the video shows him pepper spraying the red-haired civilian. He had no recollection of this action but justified it as “crowd control.” At this point in the incident, Police Officer Harris said that he was moving back anyone who was too close to the officers. Police Officer Harris did not recall what the redhead was doing specifically, and the video did not refresh his memory, but he stated that there must have been a reason to use pepper spray.

Prior to this incident, Police Officer Harris had not received any training on using pepper spray specifically for crowd control.

Under NYPD Patrol Guide procedure 221-01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. The Department examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation. Members of service shall not use any level of force to punish or retaliate (**Board Review 11**).

Under NYPD Patrol Guide procedure 221-07, officers may use pepper spray to gain or maintain control of persons who are exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. Active aggression means a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must avoid discharging pepper spray indiscriminately over a large area for disorder control. Members who are specifically trained in the use of pepper spray for disorder control may use pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors. (**Board Review 12**)

As Police Officer Harris began using his pepper spray, the closest civilians were multiple steps away, on the opposite side of the scaffolding. Multiple other officers were closer to the civilians than Police Officer Harris and did not deploy their spray at this point.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Force: Nightstick as club: Police Officer Vincent Harris struck individuals with a baton.

Allegation G – Force: Nightstick as club: Police Officer Joshua Jiminez struck individuals with a baton.

Allegation H – Force: Pepper spray: Police Officer Vincent Harris used pepper spray against individuals.

Gothamist (0:40), **BWC** (0:18), and **Twitter** (0:08) all show officers rushing as a group toward civilians. In these videos, Police Officer Jiminez and Police Officer Harris move together, running from the crosswalk area on the eastern edge of the intersection towards the denser crowd surrounding and approaching § 87(2)(b)'s arrest. The videos collectively show Police Officer Jiminez pushing a civilian with his hands and possibly his baton (the videos are not clear on this issue), then moving away from the civilian to face the front row of the crowd. Almost immediately after Police Officer Jiminez first touches the civilian, Police Officer Harris arrives alongside him, swinging his baton at people. Both officers acknowledged performing these actions in their interviews, with Police Officer Jiminez describing himself as gripping his baton between his hands and using it to push outward, away from his body and into multiple civilians. In his interview, Police Officer Jiminez stated that with hundreds of civilians surrounding the eight officers, it was important that he keep the crowd from getting too close to § 87(2)(b). He used his baton to push the crowd back, and he described this technique as effective.

In his interview, Police Officer Harris said that he saw Police Officer Jiminez surrounded by the crowd for approximately three seconds. Police Officer Harris drew his baton, approached the crowd, and swung his baton several times at the crowd members to drive the crowd away from Police Officer Jiminez. Police Officer Harris wanted the crowd to back up because they were threatening to the officers arresting § 87(2)(b) and because he could not tell if anyone was attacking Police Officer Jiminez. Police Officer Harris did not strike anyone with his baton at this point. Swinging his baton effectively moved the crowd backwards.

At 0:50 in **Gothamist** and 0:18 in **Twitter**, Police Officer Harris is visible pepper spraying the crowd. Collectively, the videos show him deploy the spray toward the front row of protesters, then turn, step further into the crowd, and deploy it toward civilians several steps away from the front row. In his interview, Police Officer Harris stated that he sprayed “a couple individuals” to back them up and protect the officers arresting § 87(2)(b). As he drew his pepper spray, the front line of the crowd was less than a foot away from him. Police Officer Harris was not aware of any procedural standard for how far away civilians should stand from him during an ongoing arrest but said that he felt that six feet was a reasonable, safe distance. Police Officer Harris aimed the spray at a single male civilian based on his walking towards the arrest at a standard walking pace. Police Officer Harris did not recall anything else about the civilian’s behavior leading up to the pepper spraying. Police Officer Harris sprayed the civilian when he was less than an arm’s length away from him. In response to being sprayed, the civilian tripped, then left the area. Police Officer Harris acknowledged that the spray affected him and may have affected other nearby people but stated that he did not aim or intentionally spray it at anyone else. Prior to this incident, Police Officer Harris had not received any training on using pepper spray specifically for crowd control.

Under NYPD Patrol Guide procedure 221-01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life (**Board Review 11**).

Under NYPD Patrol Guide procedure 221-07, officers may use pepper spray to gain or maintain control of persons who are exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. Active aggression means a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must avoid discharging pepper spray indiscriminately over a large area for disorder control. (Members who are specifically trained in the use of pepper spray for disorder control may use pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors.) (**Board Review 12**)

§ 87(2)(g)

§ 87(2)(g)

Allegation I – Force: Gun pointed: Police Officer Vincent Harris pointed his gun at individuals.

Twitter (0:27) show the next portion of this incident most clearly. After pepper spraying portions of the crowd (see **Allegation H**), Police Officer Harris walks to the southeast corner of the intersection and faces north. A civilian wearing a white t-shirt, black shorts, and a black backpack steps into the crosswalk facing south, towards Police Officer Harris. From approximately 10 to 15 feet away, the civilian then throws a brick toward Police Officer Harris with a wide, overhand motion. While the video quality makes it impossible to track the projectile's exact path, Police Officer Harris flinches almost immediately after the civilian finishes their throwing motion. The civilian then runs north, away from Police Officer Harris and out of the video frame.

While the **Twitter** camera angle then becomes unintelligible (apparently due to the recorder running away from the incident), **Gothamist** shows the subsequent moments clearly (1:03). Police Officer Harris draws and points his pistol forward (north) while walking several steps forward. He then stops, turns around, and holsters his pistol as Lt.

§ 87(2)(b) approaches him.

In his interview, Police Officer Harris stated that he saw the brick-throwing civilian holding the brick as though he was about to throw it. The civilian threw the brick and it hit Police Officer Harris on the very top of his helmet. Police Officer Harris felt a “tap” on the top of his head that was hard enough to jerk his head back. Police Officer Harris wanted to apprehend the civilian because throwing a brick at someone represents a serious use of force. Police Officer Harris took his gun out to attempt to apprehend the civilian and no one else. Police Officer Harris drew his gun and not another weapon because he was concerned that someone who would throw a brick at him might be capable of using other dangerous tactics or weapons against him. No further factors motivated Police Officer Harris's decision to draw his gun or to select his gun as opposed to another weapon.

As he drew the gun, Police Officer Harris could see the civilian and there was no one and nothing between them. There were other crowd members nearby. It would have been physically possible for Police Officer Harris to fire a bullet from his position and hit the civilian. This line of sight existed for approximately four seconds in total. Police Officer Harris walked towards the crowd, but the civilian turned and fled, leaving Police Officer Harris's view. Police Officer Harris decided it was not safe to go into the crowd to further pursue the civilian. Police Officer Harris did not know if the other officers knew where he was going and worried that they would not be able to assist him if something happened. He stopped, turned around, and holstered his gun. Police Officer Harris did not use his pointed gun to back the crowd up. Rather, the crowd was nearby as he attempted to pursue and catch the brick-throwing civilian.

Under NYPD Patrol Guide Procedure 221-01, an officer's decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable (**Board Review 11**).

Allegation J – Force: Other: Police Officer Joshua Jiminez used force against individuals.

As shown in both **BWC** (1:14) and **Gothamist** (1:37), a civilian standing several rows back in the crowd throws a large, black garbage bag over other civilians’ heads toward Police Officer Jiminez. The bag lands next to Police Officer Jiminez’s feet, and he immediately throws it back toward where it came from, over the heads of several civilians. It appears to land on the ground, and someone throws it back at him again.

In his interview, Police Officer Jiminez stated that he threw the trash bag into the crowd to clear the area around himself and the nearby officers. He was concerned that with so many objects laying around the officers’ feet, someone could have tripped or fallen over it. He was not trying to hit anyone with the thrown bag and had no further reason to throw the bag. He believed that it contained garbage but was not sure what was in it. He never observed anything that led him to believe the bag contained an explosive or firework (the presence of smoke, the production of any sound, suspicious smells, etc.).

Under NYPD Patrol Guide procedure 221-01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life (**Board Review 11**).

Allegation K – Force: Pepper spray: Police Officer Evan Angels used pepper spray against individuals.

After approximately two minutes of dealing with the crowd on the intersection's southeast corner, the officers began to retreat east along the southern sidewalk of East 12th Street. **Gothamist** (1:51) and **BWC** (2:09) show the beginning of this retreat, though **Gothamist** ends before the following FADO allegation occurs. In their statements, the interviewed officers all explained that they had § 87(2)(b) in custody at this point and needed to leave the area quickly for their and his safety.

In his interview, Police Officer Angels viewed portions of **BWC** and explained what happened during the incident. At 2:08 in **BWC**, Police Officer Angels is visible standing between two other officers (Police Officer Milian and Police Officer Torres). He is the shortest of the three officers with their backs to the camera, walking backwards as the crowd follows the officers down the block. Police Officer Angels stated that at this point in the incident, a black man in his 30s wearing a red shirt threw a large traffic cone at him from approximately 10 to 15 feet away, hitting him directly in the upper left thigh hard enough to eventually leave a large bruise. The impact did not cause PO Angels to fall or stumble and he did not end up missing work because of this injury. The black man did not do anything else to threaten Police Officer Angels. Police Officer Angels then stepped forward and discharged his pepper spray one time at the man. While a person wearing a red shirt is visible standing near the officers at 2:04 of **BWC** (just before the pepper spraying), his apparent race and age cannot be determined from the video and he is not recorded holding or throwing anything. Rather, in the moment he is visible, he is holding both hands up above his head with his palms open and flat toward the camera. While the investigation was unable to locate the reportedly thrown cone at any point in this portion of the video, the position of the camera behind Police Officer Angels means that an object thrown at his lower body may not have been recorded. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Police Officer Angels' statement and the video are consistent in showing that at this point, there was another civilian standing right next to the black man. Police Officer Angels did not see the spray land on the black man because at the moment he discharged it, other officers pulled him away so that they could all continue retreating as a group (note the officer shouting "Evan!" at 2:08 in **BWC**). However, Police Officer Angels believed the spray hit the black man because he stopped following the police. Regarding the nearby bystander, Police Officer Angels believed the spray "could have easily gotten on them." Leading up to the discharge, the bystander was screaming but not throwing anything and the black man was the only person Police Officer Angels saw who he felt warranted being sprayed. Police Officer Angels did not mean to spray the bystander.

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means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must avoid discharging pepper spray indiscriminately over a large area for disorder control. (Members who are specifically trained in the use of pepper spray for disorder control may use pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors.) (**Board Review 12**)

§ 87(2)(g)

Allegation L – Discourtesy: Word: Police Officer Evan Angels spoke discourteously to

§ 87(2)(b)

The next portion of the incident is depicted from 2:22 to 2:37 of **BWC**. As the officers walk down the street, § 87(2)(b) appears to fall or go limp, with his body visibly leaning or sinking toward the ground. Two officers are escorting and supporting him at this point, one on each side, and one of them appears to speak to him. However, the audio is not intelligible. The camera then rotates to show Police Officer Angels, who shouts at § 87(2)(b) to “Get the fuck up.” As the camera rotates back to show § 87(2)(b) walking quickly between the two escorting officers, Police Officer Angels shouts “Get the fuck up and walk like a man!”

In his interview, Police Officer Angels said that he used this language because it was “an intense moment.” Both the officers and § 87(2)(b) were in danger from thrown objects § 87(2)(b) especially, given that he had no helmet), and Police Officer Angels needed § 87(2)(b) to get up and walk immediately. Police Officer Angels said his language was a “heated response,” and that he had no further reasons for speaking this way.

Under NYPD Patrol Guide procedure 200-02, officers must treat every citizen with compassion, courtesy, professionalism, and respect (**Board Review 13**). According to DAO-DCT Case Number 2017-17276, language which would ordinarily be inappropriate in dealing with civilians may be excused during a violent confrontation (**Board Review 18**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 15**).
- Police Officer Harris has been a member of service for two years and this is the first CCRB complaint in which he has been subject.
- Police Officer Jiminez has been a member of service for three years and has been a subject in two other CCRB complaints and three other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Angels has been a member of service for two years and this is the first CCRB complaint in which he has been subject.
- Deputy Chief McCarthy has been a member of service for 35 years and has been a subject in four other CCRB complaints and six allegations, one of which was substantiated. § 87(2)(g)
 - CCRB complaint number 8801204 involved a substantiated allegation of Abuse of Authority (property damaged) against Deputy Chief McCarthy. The Board recommended Charges but the CTS database does not note what penalty, if any, the NYPD enforced.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Officer, and the results will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) [REDACTED] has no history of criminal convictions in New York City (**Board Review 16**).

Squad No.: 7

Investigator:	<u>Matthew Chaves</u>	<u>SI Matthew Chaves</u>	<u>02/11/2020</u>
	Signature	Print Title & Name	Date

Squad Leader: _____

Manager Vanessa Rosen 02/11/2021

Signature Print Title & Name Date

Reviewer:

Signature

Print Title & Name

Date